

Message Text

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C O N F I D E N T I A L KINGSTON 1369

E.O. 11652: GDS

TAGS: EMIN, JM

SUBJECT: BAUXITE: REYNOLDS SIGNS AGREEMENT WITH GOJ

1. THE GOJ AND REYNOLDS METALS SIGNED A HEADS OF AGREEMENT ON APRIL 10, 1975, JOSEPH MCCONNEL SIGNING FOR REYNOLDS AND PRIME MINISTER MANLEY SIGNING FOR THE GOJ. TEXT OF THE AGREEMENT BEING POUCHED APRIL 10. IN ADDITION WE UNDERSTAND THAT ARTHUR GOLDBERG, WHO WAS ALSO PRESENT AND IS RETURNING TO WASHINGTON APRIL 10, WILL GIVE A COPY OF THE AGREEMENT TO THE DEPARTMENT.

2. REYNOLDS AGREEMENT IS SIMILAR OR IDENTICAL IN MOST SALIENT FEATURES TO KAISER AND REVERE AGREEMENTS. PRINCIPAL DEPARTURES CONCERN COMMITMENT TO NEW INVESTMENT AND THE RATE OF THE LEVY TO BE PAID BY REYNOLDS. UNLIKE KAISER, REYNOLDS IS NOT COMMITTED TO NEW INVESTMENT IN JAMAICA AT THIS TIME. THE AGREEMENT CALLS FOR A COMMITMENT TO BUILD A 200,000 TON ADDITION TO AN ALUMINA PLANT TO BE

BUILT BY JAMAICA AND MEXICO IN JAMAICA. SHOULD IT WISH TO PARTICIPATE IN THIS AGREEMENT REYNOLDS WILL PAY THE ANNUAL BAUXITE LEVY AT A RATE OF 7.5 PERCENT RETROACTIVE TO THE DATE OF THE AGREEMENT. IN ADDITION, SHOULD JAMAICA AND MEXICO DECIDE NOT TO BUILD
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THE FACILITY, WHICH IS TO TOTAL 600,000 TONS, REYNOLDS WILL ALSO ENJOY THE 7.5 PERCENT RATE FOR 1975-1977 AND THEREAFTER WILL BE TREATED AS UNDER THE KAISER AGREEMENT. IF REYNOLDS SHOULD DECIDE NOT TO MAKE THE INVESTMENT WHILE THE OTHER PARTIES CONTINUE TO CONSTRUCT THE FACILITY, REYNOLDS WILL HAVE TO PAY THE LEVY DETERMINED BY THE BAUXITE (PRODUCTION LEVY) ACT OF 1974 WHICH CALLS FOR A RATE OF 8 PER CENT IN 1975, ESCALATING AT A RATE OF ONE-HALF PERCENT PER YEAR THEREAFTER .

3. AS IN EARLIER AGREEMENTS, THE GOJ WILL ACQUIRE TITLE TO ALL LANDS, PAYING DEPRECIATED BOOK VALUE OVER A PERIOD OF 10 YEARS WHILE REYNOLDS WILL LEASE LANDS REQUIRED FOR MINING, PAYING A RENTAL EQUIVALENT OF THE GOVERNMENT'S INTEREST. THERE ARE SOME VARIATIONS IN INTEREST RATES FROM EARLIER AGREEMENTS. IN ADDITION, SINCE REYNOLDS HAS A LARGE AGRICULTURAL OPERATION THE GOVERNMENT WILL BUY LIVESTOCK AND OTHER AGRICULTURAL ASSETS ON SIMILAR TERMS.

4. THE GOVERNMENT ACQUIRES 51 PERCENT EQUITY IN REYNOLDS ASSETS, INCLUDING THE PORT. THE GOVERNMENT WILL PAY DEPRECIATED BOOK VALUE OVER 10 YEARS WITH A 7 PERCENT INTEREST RATE ON THE UNPAID BALANCE ON LANDS AND 8 AND A HALF PERCENT ON IMPROVEMENTS.

5. REYNOLDS WILL ENJOY THE PROVISION OF THE KAISER AGREEMENT WHICH ALLOWS REDUCTIONS IN PRODUCTION BELOW THE TONNAGE MINIMUM ESTABLISHED BY THE 1974 ACT PROVIDING REDUCTIONS ARE MADE WORLDWIDE ON A PRO RATE BASIS, AND WILL ALSO EXPERIENCE THE TAX OFFSETS AND ADVANTAGES ACCORDED TO KAISER.

6. REYNOLDS AGREES TO ABANDON ITS ICSID INITIATIVES ONCE A FINAL AGREEMENT HAS BEEN SIGNED. IN THE COURSE OF A MEETING WITH PRIME MINISTER MANLEY ON APRIL 9 AMBASSADOR EXPRESSED CONCERN ABOUT JAMAICA'S POLICIES WITH RESPECT TO ICSID, INDICATING THAT USGOV REGARDED ICSID SERIOUSLY BOTH AS A TREATY COMMITMENT AND A RATIONAL MEANS OF SETTLING

INTERNATIONAL DISPUTES. MANLEY SHRUGGED OFF THE ICSID QUESTION, SAYING ICSID AND THE COMPANIES COULD DO AS THEY WISHED BUT THEY WOULD CONFIDENTIAL

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NOT BE HEARING FROM JAMAICA.

7. COMMENT: THE REYNOLDS AGREEMENT IS MORE FAVORABLE THAN THE KAISER AGREEMENT IN ONE SENSE IN THAT REYNOLDS IS NOT COMMITTED TO NEW INVESTMENT IN JAMAICA WHICH MIGHT COST IT AS MUCH AS \$200,000, 000, BUT IT IS MUCH WORSE IN THAT REYNOLDS DOES NOT RECEIVE ANY BREAK ON THE

LEVY UNTIL IT COMMITS ITSELF TO SUBSTANTIAL NEW INVESTMENTS. TO THIS EXTENT THE REYNOLDS AGREEMENT CONSTITUTES VIRTUAL CAPITULATION AND ACCEPTANCE OF THE 1974 BAUXITE ACT. IT IS NOTEWORTHY THAT THE LANGUAGE OF THE REYNOLDS AGREEMENT MAKES CLEAR THAT REDUCTIONS IN THE LEVY WILL BE ACCORDED ONLY TO COMPANIES COMMITTING THEMSELVES TO SUBSTANTIAL NEW INVESTMENT.

8. THE TERMS OF THE AGREEMENT HAVE CAUSED SOME DISSENSION IN THE REYNOLDS CAMP, AND INDEED THE MARRIAGE BLANKET BETWEEN MCCONNELL AND GOLDBERG HAS BEEN STRAINED IF NOT SPLIT. GOLDBERG REGARDS THE AGREEMENT AS A POOR ONE AND FEELS THAT A DEAL SIMILAR TO KAISER'S ON ALL POINTS COULD HAVE BEEN OBTAINED. HE BELIEVES KAISER'S COMMITMENT TO MAKE FURTHER INVESTMENT ONLY AFTER FEASIBILITY STUDIES AMOUNTS TO NO COMMITMENT AND STATES CORNELL MAIER CONFIRMED THERE HAD BEEN NONE. HE CONSIDERS THE GOVERNMENT'S REFUSAL TO GIVE REYNOLDS A BREAK ON THE LEVY IN THE ABSENCE OF A FIRM COMMITMENT TO ADDITIONAL INVESTMENT TO BE PUNITIVE AND TO RESULT FROM REYNOLDS' RELUCTANCE TO GO ALONG WITH A KAISER-TYPE AGREEMENT EARLIER. FORCING THIS SOLUTION ON REYNOLDS CONSTITUTES DISCRIMINATION, ACCORDING TO GOLDBERG, AND PREJUDICES THE POSITIONS OF ALCAN AND ALCOA. MCCONNELL WAS PRESUMABLY INFLUENCED BY THE FACT THAT REYNOLDS IS NOT BURDENED BY A COMMITMENT TO INVEST (EVEN THOUGH KAISER'S COMMITMENT IS FAR FROM ABSOLUTE), AND BY THE TAX AND TONNAGE ADVANTAGES REYNOLDS WOULD ENJOY BY CONCLUDING THE AGREEMENT NOW.

9. WE DO NOT NECESSARILY AGREE THAT THE REYNOLDS AGREEMENT IS DISCRIMINATORY SINCE IT HAS BEEN ARRIVED AT BY NEGOTIATION. WE ALSO REJECT THE NOTION THAT THE REYNOLDS LANGUAGE IS PUNITIVE THOUGH THE GOJ CLEARLY IS CONTINUING TO HANG TOUGH DESPITE THE RECESSION AND FALL IN DEMAND FOR ALUMINUM, A COURSE THAT

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MIGHT SEEM RISKY EXCEPT FOR THE FACT THAT IT HAS WON EVERY ROUND SO FAR.

10. WITH BOTH KAISER AND REYNOLDS ON BOARD, ALPART CAN BE EXPECTED TO FALL LIKE A RIPE FRUIT FROM THE TREE WHENEVER THE GOJ SHAKES THE TRUNK. GOVERNMENT NEGOTIATOR TOLD REYNOLDS THEY INTENDED TO TAKE ALCAN NEXT AND GOLDBERG OBSERVED THAT "NATHANIEL DAVIS WOULD BE A PUSHOVER." ONCE ALCAN HAS SIGNED, ALCOA WILL BE ISOLATED AND UNDER CONSIDERABLE PRESSURE TO FOLLOW SUIT. HOWEVER, GOLDBERG VOTED THAT IT WOULD BE TYPICAL OF ALCOA TO GO DOWN IN FLAMES, POSSIBLY INVITING EXPROPRIATION WITH CONSEQUENT OPIC CLAIM, AND PURSUIT OF THE ICSID SUIT, RATHER THAN ACCEDE TO JAMAICAN DEMANDS, A COURSE WHICH COULD CAUSE DIPLOMATIC PROBLEMS FOR THE U.S. GOVERNMENT FOR A LONG TIME TO COME.

11. WITH REGARD TO THE JAMAICAN/ MEXICAN CONSORTIUM, WE UNDERSTAND THAT THE PLANNED CAPACITY WILL ACTUALLY BE 900,000 TONS RATHER THAN 600,000, AND WILL INCLUDE VENEZUELA AND KAISER AS PARTNERS. MEXICO, VENEZUELA, KAISER, AND REYNOLDS WOULD CONTROL 200,000 TONS EACH, AND THE GOJ WOULD CONTROL 100,000. OWNERSHIP, HOWEVER WOULD BE DIVIDED DIFFERENTLY. PM TOLD AMBASSADOR GOJ WOULD OWN 51 PERCENT, MEXICO 29 PERCENT, VENEZUELA 10 PERCENT AND KAISER 10 PERCENT. KAISER WAS PROMISED 20 PERCENT BUT ACCORDING TO PM WOULD HAVE TO GIVE UP HALF TO ACCOMODATE VENEZUELA. REYNOLDS WOULD HAVE NO EQUITY PARTICIPATION BUT WOULD BE ENTITLED TO EQUIVALENT PRODUCTION. GERARD

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